

**APPLICANT:**

David L. Rose and Nancy S. Rose

**REQUEST:** A special exception pursuant to § 267-53D(1) of the Harford County Code to permit commercial vehicle storage

**HEARING DATE:** March 9, 2005

**BEFORE THE****ZONING HEARING EXAMINER****FOR HARFORD COUNTY****BOARD OF APPEALS**

**Case No. 5470**

**ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** David L. Rose and Nancy S. Rose

**LOCATION:** 3114 Troyer Road  
Tax Map: 22 / Grid: 3F / Parcel: 5  
Election District: Fourth (4<sup>th</sup>)

**PRESENT ZONING:** AG / Agricultural

**REQUEST:** A special exception pursuant to § 267-53D(1) of the Harford County Code to permit commercial vehicle storage in an Agricultural District.

**TESTIMONY AND EVIDENCE OF RECORD:**

David L. Rose, Applicant, explained his request as seeking permission to park four (4) garbage trucks, not owned by the Applicants, on the subject property. Mr. Rose testified that he and his wife own approximately 171 acres of land used for agricultural purposes, 155 acres of which is located in Harford County and 17 of which is located in Baltimore County. Mr. Rose and three generations of his family have farmed the property. His family owns, all together, approximately 900 acres of property located in the general vicinity of the subject property. Additionally, his family leases for farm purposes another 7,000 acres. The subject property, and the improvements located thereon, is the center of operations for the entire Rose farming operation. The overall business owns and utilizes approximately 100 pieces of equipment, many of which are larger than the garbage trucks which will be parked on the property. These pieces of farm equipment include choppers and combines. This agriculturally related equipment is permitted as a matter of right on the subject property.

Referencing Applicants' Exhibit 8, Mr. Rose identified various improvements on the property, including shop buildings, grain storage buildings, feed lots, calf barns, and grain silos.

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The four garbage trucks for which permission is sought have been stored on the property for about four months. They are owned by Jim and Bob Mercer, who haul scrap produce for Del Monte. Some of this scrap produce is brought onto the Rose farm in the evening and is utilized as feed for the Rose Farm cattle. Deliveries are made to the Rose property about twice a week.

Mr. Rose identified the area on his property on which the trucks will be parked. This area is not visible from the road or adjacent residential properties. The closest residential property, and the one which would have the clearest visibility of the Rose farm operation, is owned by a cousin of Mr. Rose, who does not object.

Mr. Rose stated that Troyer Road, on which the farm property fronts, has a 50 m.p.h. speed limit. The trucks will not be visible from Troyer Road.

Mr. Rose then was asked to review the Limitations, Guides and Standards section of the Harford County Development Regulations. He indicated that the parking and storage of the garbage trucks would have no adverse impact, and would be in full conformity with the Limitations, Guides and Standards. While a garbage truck could be expected to have some odor, Mr. Rose indicated that any odor would be masked by the normal odors associated with a farm operation, particularly including that generated by liquid fertilizer which is stored in tanks adjacent to the proposed parking area of the garbage trucks. On a drawing marked as Applicants' Exhibit No. 9 Mr. Rose identified, in red, the area in which the garbage trucks will be parked.

Next testified Dennis Sigler for the Harford County Department of Planning and Zoning. Mr. Sigler stated that the request meets or exceeds all applicable standards. Troyer Road can easily handle the type of trucks which will be parked on the property. Echoing the findings of the Department, Mr. Sigler recommended approval.

Next testified Carroll Pieper, Jr., who identified himself as an adjoining farmer and land owner.

Mr. Pieper's concern was that the Rose property is in an Agricultural Preservation District, and Mr. Pieper questions how garbage trucks can be allowed to be stored on property in such a district. Mr. Pieper is worried about setting a bad precedent. Mr. Pieper himself was turned down by the Harford County Department of Planning and Zoning when he requested permission to build a commercial building on his property, which is similarly used and also in an Agricultural Preservation District. He is accordingly concerned about uniform interpretation of the laws, and exceptions being granted for some and not for others.

Mr. Pieper, otherwise, is not opposing this specific request.

There was no other testimony or evidence presented in opposition.

**APPLICABLE LAW:**

This special exception request is governed by § 267-53D(1) of the Harford County Code:

*“D. Motor Vehicle and related services.*

*(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

*(a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

*(b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

*(c) A minimum parcel area of two (2) acres shall be provided.*

§ 267-9I, Limitations, Guides and Standards, is also applicable and will be addressed below.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicants operate a large, and apparently busy, farm located in an agricultural district of Harford County. They operate many pieces of farm related equipment, and have improved the subject property with an extensive set of buildings and storage tanks.

The Applicants are friends with the operators of four garbage trucks. The Applicants now seek permission to allow the operators of those garbage trucks to park the garbage trucks on the subject property.

The applicable Code section is 267-53D(1) which allows commercial vehicles, such as garbage trucks, to be stored in an agricultural district, provided that use meets the following qualifications:

*(a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

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The subject property has, as discussed above, a large grouping of buildings, silos, grain storage tanks, liquid fertilizer tanks, etc. The garbage trucks will be stored virtually in the middle of this collection of buildings. The testimony of Mr. Rose was that the trucks will not be visible from any adjacent area or from the view of public roads. There was no evidence to contradict this testimony and, indeed, the drawings and photographs submitted by the Applicants appear to substantiate Mr. Rose's statement that the vehicles will be fully screened.

- (b) *The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

No request to allow the sales or service is made.

- (c) *The minimum parcel area of two (2) acres shall be provided.*

The subject property greatly exceeds the minimum two (2) acre requirement.

It is accordingly found that the Applicant meets all the specific conditions of § 267-53D(1).

However, the generalized standards of § 267-9I must also be examined.

- (1) *The number of persons living or working in the immediate area.*

The land use is agricultural, located in an agricultural preservation district. There exist only scattered residential dwellings throughout the area. The garbage trucks will be stored well off Troyer Road and do not appear to have any impact on, or will be impacted by the number of persons living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The property is accessed by a State owned and maintained Minor Arterial – Rural road. Sight distances are good. The speed limit on Troyer Road is 50 m.p.h. Traffic conditions, accordingly, do not appear to be impacted by the proposed use. Facilities for pedestrian movement are not a consideration in this rural agricultural area.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

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The use is presumed to be permitted in this agricultural district as a special exception. All applicable Code requirements are met. It will accordingly have no impact on the orderly growth of the neighborhood or community or the fiscal impact of the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

While four garbage trucks would be anticipated to have some impact by way of gas or diesel fumes, noise of operations (particularly starting up in the morning), and perhaps most conspicuously, odor, any noticeable impact of the trucks should be minimized, if not completely eliminated, by their storage within the middle of a working and highly active farm.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Appropriate facilities are available. The property is served by private well and septic. A private trash collector will service the property. However, the proposed use should not have any impact whatsoever upon the well, septic or on-site refuse issues.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The request is consistent with generally accepted planning principals and practices. As stated above, the use is presumed to be an appropriate use in this agricultural district.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

The proposal should have no impact on any of these uses.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

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- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such features or opportunities have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such cultural or historic landmarks have been identified.

Lastly, the Applicants' use must be reviewed in light of the special exception review principles provided by Schultz v. Pritts, 291 Md. 1 (1981). Briefly stated, the special exception, which is considered a compatible use in its zoning district, cannot be granted if its impact is somehow greater at the proposed location than at some other location within the district. By way of example, a gas station has inherent impacts regardless of where it may be located. A special exception for a gas station cannot be denied simply because of those normal impacts. However, the impact of the gas station may be greater on the community if it were located next to, for instance, a water treatment plant. Such a potential impact may be sufficient grounds to deny a gas station because the impact may be greater at the proposed location than at some other. As stated by Schultz v. Pritts:

“ . . . a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

No such impact from the proposed garbage truck storage special exception, however, has been articulated or is found. No such impacts have been identified by either the Department of Planning and Zoning or any potential opponent. Review of the testimony in the record of the case shows no such potential impact. Accordingly, it is found that the proposed use does not have a greater impact at the proposed location than that it would if located elsewhere within the zone. Being a use which is presumed to be compatible with other uses in this zoning district, and with no evidence of any particular impacts, the use must be approved.

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**CONCLUSION:**

It is accordingly recommended that the requested special exception be granted, subject to the following conditions:

1. The Applicants shall obtain a Zoning Certificate for the storage of the trucks.
2. Approval is for the Applicants only and shall terminate upon sale of the property by the Applicants.
3. The approval is limited to the parking of four garbage/trash trucks only.
4. The garbage trucks shall be completely empty of all refuse and trash each evening they are stored on the subject property.

Date: April 4, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner